IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL MISC. APPEAL No. 521 of 2003

R.S.R.T.C
V/S
SMT.DHAPI & ORS

2. CIVIL MISC. APPEAL No. 583 of 2003

R.S.R.T.C
V/S
KULSUM AND ANR.

Mr. ANIL BACHHAWAT, for the appellant / petitioner
Mr. RAJESH PANWAR, for the respondent/caveator

Date of Order : 14.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Both these appeals arise out of common Judgment of the learned Tribunal, deciding two claim petitions no.7/99 and 8/99, and are therefore, being disposed by this common Judgment.

The claimants have filed the claim petitions alleging, that deceaseds were traveling in three wheeler Tempo no.1636, and while Tempo reached at Nathawali, the bus of the appellant came from opposite direction on the wrong side and dashed against the Tempo, rather dragged it for a distance of about 40-50 ft., as a result of which, victims Mohd. Ramzan and Mohd. Farhan sustained injuries, and died. The appellant contested the claims on the ground, that accident was out-come of negligent driving of the Tempo, as it was being driven rashly and negligently, and by not following the traffic rules. Another stand taken was, that the owner and insurer of the Tempo have not been impleaded as parties; likewise, amount claimed was contended to be exaggerated. The driver, defendant no.2 remained exparte.

The learned Tribunal while deciding issue no.2, relating to negligence, found that accident was out-come of negligent driving of bus driver, and while deciding issue relating to quantum, the learned Tribunal found, that claimants in claim case no.7/99, relating to

deceased Mohd. Ramzan, are entitled to be compensation of total sum of Rs. 4,26,666/-; while in claim case no.8/99, relating to deceased Mohd. Farhan, found the claimants to be entitled to Rs.3.47 lacs. All that amounts were directed to carry interest @9% from the date of claim petitions.

Assailing the Judgments, first submission made is, regarding the finding on issue no.1, and it is contended that, true it is that from Ex.5 and 6, it does transpire that bus went on the wrong side, but then, it happened so, because at the place of accident, bus was over taking the tractor trolley , to whom the driver of the appellant had given indicator, and on being permitted to overtake, bus was overtaking, and at this stage, Tempo being driven rashly and negligently, happened to hit against the bus. The learned counsel for the appellant read to me the evidences of eye witnesses PW-2 and PW-3, and also read to me the statement of driver, being DW-1.

I have considered the submissions, and perused the record, which has been requisitioned.

A look at the statement of PW-2 and PW-3, in conjunction with the material on record makes it clear, that the theory propounded by defendants cannot be accepted. It is significant to note that no such plea was taken by the appellant in the written-statement, and the driver had remained exparte. Then all that is contended in the written statement was, that the bus was being driven according to traffic rules at normal speed, and finding the Tempo going uncontrolled, driver had blown horn, and the accident occurred. Then a look at statement of PW-1 and 2 shows, that in their entire cross-examination, this theory was not put to them, that the bus happened to be on wrong side in the process of overtaking the tractor trolley, much less after receiving the indication from the tractor driver. Rather the entire cross-examination is directed towards the fact, that the witness did not see as to how accident occurred, or that he is giving false statement to

help the taxi driver. The matter does not end here, inasmuch as, even the evidence led by defendant itself is self-contradictory, inasmuch as, the driver DW-1 has deposed, that when he reached near Nathawali, he saw a Tempo coming from opposite direction, then he used the dipper, and took side, and was over taking the tractor going ahead of him, and at that time, Tempo hit against the bus. As against this, DW-2 Ramesh Chandra, though has purported toe the line by deposing, that bus was over taking the tractor trolley which was going ahead of bus, and at that time, Tempo was coming at fast speed from opposite direction. He has further deposed, that on account of cow emerging on the scene, the Tempo driver drove the Tempo on the wrong side, and noticing the bus lost the control, and dashed against the bus. Significantly, in the cross-examination, he has categorically deposed, that "यह कहना गलत है कि दुघर्टना ट्रेक्टर ट्रोली को ओवर टेक करते समय हुई थी ।" . Then he has further deposed, that when the cow emerged, the bus was taken on the correct side, and the cow went towards the Tempo. Thus this theory of accident taking place during the process of overtaking the tractor, does not stand to reason at all, and a look at side plan Ex.5 shows, that the accident had occurred at the extreme wrong side of road, then a look at the photographs of site, available on record, being Ex.10 to 15, rather clearly show, that there was very very wide road, and bus had completely left the road on the wrong side, rather all its six tyres were on kachha portion of wrong side.

Thus in view of unreliability of the version of DW-1 and 2, and in view of statements of PW-2 and 3, even on the principle of res ipsa loquitur it clearly establishes that the accident was the outcome of negligence of the bus driver. Thus I do not find any error in the findings recorded by learned Tribunal on this issue about negligence.

Coming to issue no.2, nothing was submitted regarding the quantum assessed in claim no.7/99, and so far quantum assessed in claim no.8/99 is concerned, learned counsel for the appellant submitted, that there is no sufficient material on record to show, that the deceased was

earning Rs. 3500/- per month. It was contended, that PW-5 Jakir Hussain, who has been produced as the employer, and has produced his computer accounts, being Ex.17, does not establish the salary of deceased to be Rs. 3500/-.

I have considered the submission, and perused the statement of witness, and find that in Ex.17, in the salary account, monthly payment of salary has been shown to be Rs. 5000/-, except during the months of October and November, during which months, salary has been paid to the extent of Rs.7500/-, and it is then clarified, that he had employed two persons, one being deceased Mohd.Farhan, and other being Rashid, and out of this Rs.5000/-, he was paying Rs.3500/- to Mohd. Farhan, and Rs.1500/- to other employee Rashid. In cross-examination, nothing has been elicited, which could show, that employer was employing more employees, or that the entry made is fictitious, or that deceased was paid lesser salary.

In these circumstances, I do not find any error in the finding recorded by learned Tribunal, in assessing the income of deceased at Rs.3500/- per month. In that view of the matter, the quantum of compensation also does not require any interference. The appeals thus have no force, and are hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/